

1 ERSKINE & TULLEY  
A PROFESSIONAL CORPORATION  
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5 Attorneys for Plaintiffs

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

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12 BOARD OF TRUSTEES OF THE SHEET ) NO. C 08 0306 BZ  
METAL WORKERS, et al., )  
13 )  
Plaintiffs, ) POINTS AND AUTHORITIES IN  
14 ) SUPPORT OF MOTION FOR  
vs. ) ENTRY OF DEFAULT JUDGMENT  
15 )  
C R SCHELLENGER H V A C INC., etc., )  
16 )  
Defendant. )  
17 )  
18

19 I. Introduction

20 The Clerk's Notice Regarding Tentative Ruling requires that  
21 a notice be filed with the Court before August 8, 2008 by any party  
22 who wishes to contest the tentative ruling. Plaintiffs served the  
23 Notice on defendant July 16, 2008. On July 29, 2008, Alex and Connie  
24 Schellenger filed a Notice of Contest.

25 Plaintiffs agree with the tentative ruling , except that it  
26 appears that the amount due has increased. We respectfully request  
27 that the Tentative Ruling be amended to reflect the Amounts set fourth  
28 in Exhibit 11, as explained in the Declaration of Robin Niznik.

1 II. Standing to File Notice of Contest

2 Alex and Connie Schellenger have filed the Notice of Contest  
3 on behalf of C R Schellenger HVAC INC., Local Rule 3-9 states that a  
4 corporation, which is the only defendant in this case, may only appear  
5 through a member of the bar.

6 III. The Objections raised by Mr. & Mrs. Schellenger  
7 are without merit

8 They admit the corporation owes the money, Notice of Contest  
9 2:2.

10 The corporation wanted a payment plan but the parties have  
11 not agreed upon or entered into such an agreement. See Supplemental  
12 Declaration of Michael J. Carroll.

13 Defendant was contractually bound to pay fringe benefits due  
14 to the "evergreen clause" in the contract, Exhibit 1, Article XIV,  
15 Section 1. It is also bound by the negotiations which took place to  
16 renew that contract, Exhibit 1, Article XIV, Section 4. See the  
17 Supplemental Declaration of Carl Sanchez and Exhibit 7.

18 Defendant had actual knowledge of the 20% liquidated damages  
19 provision. It has paid them for earlier delinquencies. See the  
20 Declaration of Robin Niznik and Exhibits 8, 9, and 10. The Court has  
21 correctly cited the applicable law in the Tentative Ruling at 5:8-22.  
22 As long as the plan provides for 20% liquidated damages. Section  
23 1132(g)(2)(C)(ii) makes an award mandatory. There is no case  
24 law to support defendant's position.

25 Plaintiffs are the Board of Trustees of fringe benefit trust  
26 funds regulated under ERISA. They are not labor unions. They do not  
27 provide labor. Defendant's representatives seek to raise an equitable  
28 defense that the union failed to supply competent workers. Such

1 defenses have uniformly been rejected in ERISA collection cases. See  
2 Audit Services v. Rolfson, 641 F.2d 757,761-62, (9th.Cir.1981) and  
3 Operating Engineers Pension Fund v. Cecil Backhoe Services, Inc., 795  
4 F2d 1501(9th.Cir.1986).

5 No good cause exists to justify setting aside the default  
6 entered against defendant. There is no meritorious defense set forth  
7 in the Notice of Contest. Plaintiffs have proved their case and are  
8 entitled to Judgment.

9 Respectfully submitted,

10 DATED: August 7, 2008

ERSKINE & TULLEY  
A PROFESSIONAL CORPORATION

11  
12 By: 

Michael J. Carroll  
Attorneys for Plaintiff

PROOF OF SERVICE

I, SHARON EASTMAN, the undersigned, hereby certify and declare under penalty of perjury that the following statements are true and correct:

1. I am a citizen of the United States and employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within above entitled action.

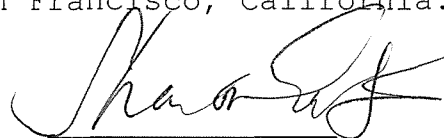
2. My business address is 220 Montgomery Street, Suite 303, San Francisco, California 94104.

3. On August 7, 2008 I caused a true copy of the attached documents POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR ENTRY OF DEFAULT JUDGMENT; SUPPLEMENTAL DECLARATION OF CARL SANCHEZ, DECLARATION ROBIN NIZNIK, SUPPLEMENTAL DECLARATION OF MICHAEL J. CARROLL IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT to be served on the following person(s) in the manner indicated below:

C R Schellenger HVAC Inc.  
Alex and Connie Schellenger  
11 Terrace Drive  
Calistoga, CA 94515

☒ Served by deposit in the United States mail in a sealed envelope with the postage thereon fully prepaid.

Executed on August 7, 2008 at San Francisco, California.

  
SHARON EASTMAN